

## PROPOSED CHARGING LETTER

Mr. Long Hoang Nguyen  
President  
VTA Telecom Corporation  
3898 Magnolia Dr, Unit 1,  
Palo Alto, CA 94306

Re: Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by VTA Telecom Corporation

Dear Mr. Nguyen:

The Department of State (Department) has reason to believe that VTA Telecom Corporation (“VTA” or “Respondent”) violated the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130) in connection with both unauthorized exports and attempted unauthorized exports of defense articles, including technical data, to Vietnam, a proscribed destination under ITAR § 126.1 at the time of the unauthorized exports, and attempted unauthorized exports.<sup>1</sup> A total of six violations are charged at this time.

The essential facts constituting the violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of Respondent. Please be advised that this proposed charging letter, pursuant to 22 CFR § 128.3, provides notice of the Department’s intent to impose debarment or civil penalties or both in accordance with 22 CFR §§ 127.7 and 127.10.

When determining the violations to pursue in this matter, the Department considered several aggravating factors, including: (a) the violations involved unauthorized exports to a proscribed destination at the time of the activity; (b) Respondent disclosed the violations to the Department only after the U.S. government alerted the Respondent of the violations when charging its former vice president with related criminal violations; (c) the violations and surrounding

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<sup>1</sup> The Secretary of State lifted the ban on lethal weapons sales to Vietnam in May 2016. The ITAR was subsequently amended on September 29, 2016, removing Vietnam from the proscribed countries in 126.1, see 81 FR 66804.

circumstances demonstrate Respondent's former personnel's disregard for the requirements of the ITAR; (d) and senior management participated in or was aware of the conduct described herein.

The Department also considered mitigating factors: (a) Respondent cooperated with the Department's review of the potential violations; and (b) Respondent entered into three agreements with the Directorate of Defense Trade Controls (DDTC) tolling the statutory period that applies to enforcement of the AECA and the ITAR for the violations described herein; and (c) Respondent has conducted a thorough review of both the conduct and the violations and has taken appropriate steps to remediate them.

This proposed charging letter describes certain violations for the time period from June 18, 2015, to July 19, 2016.

### JURISDICTION

VTA is a corporation organized under the laws of the State of Florida. Respondent is a U.S. person within the meaning of the ITAR § 120.62 and is subject to the jurisdiction of the United States.

During the period covered by the described violations set forth herein, VTA was engaged in the export of defense articles and was not registered with DDTC as an exporter, nor as a manufacturer, as required under § 38 of the AECA and § 122.1 of the ITAR.

The described violations relate to defense articles controlled under Categories IV(d)(7), IV(h)(11), IV(h)(20), XII(a), and XIX(c) of the U.S. Munitions List (USML), § 121.1 of the ITAR, at the time the violations occurred.

### BACKGROUND

VTA was incorporated in 2013 in Florida as a subsidiary of a telecommunications company located in Hanoi, Vietnam. VTA later moved its headquarters to Milpitas, California. VTA procured various ITAR-controlled defense articles, including related technical data, in the United States and both exported and attempted to export them to Vietnam. At times, VTA's executive officers were aware that the defense articles required a license from DDTC to export and that the defense articles were intended to facilitate the development of defense programs in Vietnam. VTA made false statements in connection with



exports by either misrepresenting the defense article itself on export control documents or misrepresenting the end use of the defense article on export control documents.

### VIOLATIONS

The ITAR violations addressed in this proposed charging letter are derived from a disclosure that VTA submitted to the Department in the wake of a federal law enforcement investigation into the company for alleged criminal violations of U.S. export control laws. As part of that investigation, federal law enforcement authorities executed a search warrant at VTA's office located at 400 Capella Way, Milpitas, California, on October 26, 2016, and arrested VTA's former vice president and an account manager on charges related to violations of U.S. export control laws.

VTA subsequently engaged outside counsel to conduct an internal investigation regarding the company's violations of U.S. export control laws. After that internal investigation concluded, VTA submitted concurrent disclosures to the Department of Commerce's Bureau of Industry and Security and to DDTC regarding its multiple violations of the Export Administration Regulations and the ITAR, respectively.

VTA disclosed that on June 18, 2015, it exported without authorization one Electro-Optical Imaging (EO Imaging) video tracker, which is controlled under USML Category XII(a) and designated as Significant Military Equipment (SME), to Vietnam, a proscribed country at that time of the activity. As defined in ITAR § 120.36, SME means articles for which special export controls are warranted because of their capacity for substantial military utility or capability. VTA misrepresented the export as an "electronic board" to the freight forwarder and undervalued the export declaring its value as zero dollar and shipping fees of \$70. Similarly, on June 30, 2015, VTA without authorization exported a second EO Imaging tracker to Vietnam and again misrepresented the export as an "electronic board" to the freight forwarder and, also, undervalued the tracker.

VTA disclosed that on September 25, 2015, it exported without authorization ITAR-controlled EO Imaging video trackers, cables, and related software to Vietnam. VTA misrepresented the shipment as containing, "four circuit boards, two hard drives, 1 meter, and auxiliary cables." This EO Imaging tracker was also designated SME, and again, VTA misrepresented

the value on the export control documents it presented to the freight forwarder.

VTA disclosed that between September 2015 and July 2016, it exported or attempted to export to Vietnam without authorization 86 hobby rocket motors, 126 propellant reload kits for the hobby rocket motors, and forty freestanding propellant reload kits for the hobby rocket motors. The hobby rocket motors and aforementioned propellants are controlled under USML Categories IV(d)(7) and IV(h)(20), respectively, and some of these articles are SME.

VTA disclosed that on April 13, 2016, it attempted to export without authorization 30 explosive bolts controlled under USML Category IV(h)(11) to Vietnam. However, Customs and Border Protection seized the explosive bolts that VTA was attempting to export. VTA misrepresented the intended use of the explosive bolts on the required end-use statement.

VTA disclosed that on July 19, 2016, it attempted to export without authorization a Teledyne J402-CA-400 engine controlled under USML Category XIX(c), and designated as SME, to Vietnam by mispresenting its intended use and providing a false statement with respect to the required end use certification to a freight forwarder.

### RELEVANT ITAR REQUIREMENTS

The relevant period for the conduct is June 18, 2015, through July 19, 2016. The regulations effective as of the relevant period are described below. Any amendments to the regulations during the relevant period are identified in a footnote.

Part 121 of the ITAR identifies the items that are defense articles, technical data, and defense services pursuant to § 38 of the AECA.

Section 123.1(a) of the ITAR provides that any person who intends to export or to import temporarily a defense article must obtain the approval of the DDTC prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

Section 126.1(a) of the ITAR provides that it is the policy of the United States to deny, among other things, licenses and other approvals for exports and



imports of defense articles and defense services, destined for or originating in certain countries.

Section 127.1(a)(1) of the ITAR provides that it is unlawful to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from DDTC.

Section 127.2(a) of the ITAR provides that it is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service.

Section 122.5 of the ITAR requires any person who is required to register with DDTC to maintain records concerning the manufacture, acquisition, and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation) of defense articles, of technical data, and the provision of defense services. Records in an electronic format must be maintained in an electronic format using a process or system capable of reproducing all records on paper. All records must be maintained for a period of five years from the date of the transaction. Such records must be available at all times for inspection and copying by DDTC. Upon request, the person maintaining the records must furnish the records required to be maintained in accordance with the ITAR.

## CHARGES

### Charges 1-5: Unauthorized Exports to Vietnam

Respondent violated 22 CFR § 127.1(a)(1) five times when Respondent without authorization exported or attempted to export ITAR-controlled defense articles including hobby rocket motors, video trackers, including related technical data, and a gas turbine engine controlled under USML Categories IV(d)(7), IV(h), IV(h)(11), XII(a), and XIX(c) to Vietnam, a country prohibited by 22 CFR § 126.1 at the time of the violations.

Charge 6: Misrepresentation on Export Control Documents

Respondent violated 22 CFR § 127.2(a) one time when Respondent knowingly provided false statements on the required end-use statements for the purpose of causing the export of a defense article to Vietnam.

ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 C.F.R. § 128.3(a), administrative proceedings against a respondent are instituted by means of a charging letter for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$1,200,000, per violation of 22 U.S.C. § 2778, may be imposed as well, in accordance with 22 U.S.C. § 2778(e) and 22 CFR § 127.10.

A respondent has certain rights in such proceedings as described in 22 C.F.R. Part 128. This is a proposed charging letter. In the event, however, that the Department serves Respondent with a charging letter, the company is advised of the following:

You are required to answer a charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges and you may be held in default. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that the company is served with a charging letter, its answer, written demand for oral hearing (if any), and supporting evidence required by 22 CFR § 128.5(b), shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case at the following address:

USCG, Office of Administrative Law Judges G-CJ,  
2100 Second Street, SW  
Room 6302  
Washington, DC 20593

A copy shall be simultaneously mailed to the Director, Office of Defense Trade Controls Compliance:

Director Jae Shin  
U.S. Department of State  
PM/DDTC  
SA-1, Room L132  
2301 E Street, NW  
Washington, DC 20522-0112

If a respondent does not demand an oral hearing, it must transmit within seven (7) days after the service of its answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue.

Please be advised also that charging letters may be amended upon reasonable notice. Furthermore, pursuant to 22 CFR § 128.11, cases may be settled through consent agreements, including after service of a proposed charging letter.

The U.S. government is free to pursue civil, administrative, and/or criminal enforcement for AECA and ITAR violations. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

Jae Shin  
Director  
Defense Trade Controls Compliance  
Bureau of Political-Military Affairs